

AG Contract No. KR97 1235TRN
ADOT ECS File No. JPA 97-82
Project: 187 PN 186/H4419 01C
Section: SR-187, SR-387 - SR-87

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE GILA RIVER INDIAN COMMUNITY

THIS AGREEMENT is entered into 11 SEPTEMBER 1998, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the GILA RIVER INDIAN COMMUNITY, acting by and through its TRIBAL COUNCIL (the "GRIC").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The GRIC is empowered by Tribal Council Resolution to enter into this agreement, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the GRIC.

3. The State and the GRIC desire to participate in an improvement project to SR-187 from the SR-387 traffic interchange to SR-87, a distance of 5.40 miles, more or less, and have agreed that upon completion of the improvements the State will abandon ownership jurisdiction and maintenance responsibility for all of SR-187 to the GRIC.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:
=====

NO. 22657
Filed with the Secretary of State
Date Filed: 09/11/98
Betty Bayless
Secretary of State
By Dick V. Greenwood

II. SCOPE

1. The GRIC will:

a. Provide design plans, specifications and such other documents and services required for the improvement project suitable for construction bidding and construction.

b. Invoice the State for the cost of the improvements in the amount of \$3,200,310.00. Be responsible for all costs of the improvements project over and above the State's contribution of \$3,200,310.00.

c. Call for bids and award one or more construction contracts for the project. Administer same and make all payments to the contractor. Be responsible for any contractor claims for extra compensation due to delays or whatever reason.

d. Upon completion, approve and accept the project improvements on behalf of the parties hereto as complete.

e. Waive the requirements of Arizona Revised Statutes Section 28-106.

f. Upon approval of and by Resolution of the Tribal Council, accept jurisdiction and maintenance responsibility for SR-187 from the SR-387 traffic interchange to SR-87.

2. The State will:

a. Pay the GRIC \$3,200,310.00 as the cost of the project improvements within 30 days after receipt and approval of an invoice.

b. Upon completion of the project improvements, and upon approval of and by Resolution of the State Transportation Board, abandon ownership jurisdiction and maintenance responsibility for SR-187 to the GRIC.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said improvements and abandonment; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, unless assumed by another governmental entity, may be cancelled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. Arbitration

a. In the event of any dispute which may arise out of this agreement, the parties agree to subject themselves to the jurisdiction of the Phoenix Region of the American Arbitration Association ("AAA") and submit such dispute to arbitration administered by the AAA. The parties agree that such arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §9 et seq. If there are two parties to the claim, claims will be submitted to a panel of three (3) arbitrators, the majority of who will render a decision and/or award.

b. The party or parties desiring to submit any controversy to arbitration will do so by written notice to the other party or parties. The notice will include the following items: (1) the party's position as to the matter(s) in controversy, (2) the factual and legal basis for compensation for the claim, (3) the basis for any extension of time and scheduled completion date, (4) the party's estimated time for hearing, and (5) the party's choice of arbitrator.

c. Each arbitrator will be a person qualified, by profession or experience, with the issues in controversy. The State and the Community will each select an arbitrator who will not be an employee or official representative of the State, or employee or official representative of the Community. The third arbitrator will be selected by the AAA.

d. Within ten (10) working days after receipt of such demand and notice for arbitration, each responding party will provide a written summary of its position, the basis for rejection of the opposing party's claim, time extension or other relief, and its choice of arbitrator.

e. In the event any party fails or refuses to respond to a demand for arbitration or to appear for the first scheduled hearing, the arbitration hearing will be scheduled as soon as the arbitration panel can convene or reconvene. In such event, notice of a scheduled hearing will be sent to the non-responding party or parties, by registered mail, return receipt requested and by telefax. Should the non-responding party or parties fail to appear after receipt of notice, the party or parties attending will have an award by default in its favor by the arbitration panel in the amount prayed for in the papers submitted pursuant to subparagraph 6.1.

f. The arbitrators or arbitration panel will be required to render a decision based on the evidence the parties enter into the record at the arbitration hearing. If the arbitrators do not base their decision on the evidence entered into the record, the decision will be subject to review pursuant to 9 U.S.C. §10 of the Federal Arbitration Act. The arbitrator's decision will be certified by the AAA.

g. The arbitrators will render an independent review of the claim(s) presented; and each arbitrator will act independently and will not be any party's representative. The arbitrator's deliberations are confidential and will not be disclosed to third parties. Each arbitrator and his affiliates and Firm will be disqualified as a witness, consultant or expert for either party in this or any other dispute agreement. No party will engage in ex parte communications with the designated arbitrators. This prohibition does not apply to routine requests for fees and expenses to be borne by the parties. No written communications will be made between the arbitrators and a party without the other party receiving a copy, and no oral communications will take place without the other party being present.

h. The arbitration panel will be required to render a decision and award within thirty (30) days after the close of the hearing.

i. The fees and expenses of the arbitration panel will be shared equally by the parties to arbitration

6. This agreement shall be construed in accordance with Arizona law and any legal action except arbitration thereupon shall be initiated in the United States District Court of Arizona.

7. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

Governor
Gila River Indian Community
PO Box 97
Sacaton, AZ 85247

8. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written

GILA RIVER INDIAN COMMUNITY

STATE OF ARIZONA

By Mary V. Thomas
MARY V. THOMAS
Governor

By Edward D. Wright
EDWARD D. WRIGHT
Deputy State Engineer

ATTEST

By Kimberly Antone
KIMBERLY ANTONE
Community Council Secretary



GILA RIVER INDIAN COMMUNITY

SACATON, AZ 85247

RESOLUTION GR-72-96

A RESOLUTION TO PLACE STATE HIGHWAY 187 INTO THE ARIZONA DEPARTMENT OF TRANSPORTATION'S FIVE-YEAR TRANSPORTATION IMPROVEMENT PLAN FOR 1997 - 2001

WHEREAS, the Gila River Indian Community (the "Community") recognizes that a well planned and well maintained system of roads is essential to the health, safety and welfare of our Community; and

WHEREAS, the current condition of State Highway 187, which serves as a major connector through the Community, is unsafe due to its narrow width and deteriorating asphalt overlay; and

WHEREAS, State Highway 187 is currently under the Arizona Department of Transportation's ("ADOT") jurisdiction and maintenance; and

WHEREAS, the Community has requested that ADOT place State Highway 187 into the State's Five-Year Transportation Improvement Plan for 1997 - 2001; and

WHEREAS, the Community is willing to discuss with ADOT the transfer of State Highway 187 over to local jurisdiction after it is improved and constructed to current standards.

NOW THEREFORE BE IT RESOLVED, that the Community requests that ADOT place State Highway 187 into the State's Five-Year Transportation Improvement Plan for 1997 - 2001 for improvement and construction to current standards, including safety related upgrades.

BE IT FURTHER RESOLVED, that the Community and ADOT discuss in good faith the transfer of State Highway 187 over to local jurisdiction after it is improved and constructed to current standards.

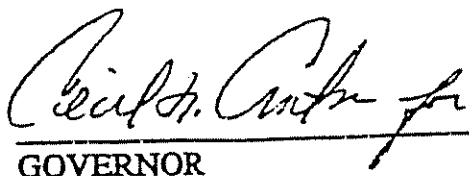
GILA RIVER INDIAN COMMUNITY
RESOLUTION GR-72-96
PAGE 2

BE IT FINALLY RESOLVED, that the Governor, Lieutenant Governor or their designee be authorized to sign and execute documents in order to carry out the intent of this resolution.

CERTIFICATION

Pursuant to authority contained in Article XV, Section 1, (a), (1), (9), and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the Tribe January 22, 1960 and approved by the Secretary of the Interior on March 17, 1960, the foregoing Resolution was adopted this 19th day of June, 1996, at a Regular Community Council Meeting held in District #3, Sacaton, Arizona, at which a quorum of 13 Members were present by a vote of 12 FOR; 1 OPPOSE; 0 ABSTAIN; 4 ABSENT; 0 VACANCY.

GILA RIVER INDIAN COMMUNITY


GOVERNOR

ATTEST:


COMMUNITY COUNCIL SECRETARY

RESOLUTION

BE IT RESOLVED on this 18th day of August 1998, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the Gila River Indian Community for the purpose of defining responsibilities for the design, construction and maintenance of improvements to SR-187 and the abandonment of ownership and maintenance jurisdiction of SR-187 to the Community.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution.


A handwritten signature in black ink, appearing to read 'D. Allocco', is written over a horizontal line.

DAVID ALLOCCO, Manager
Engineering Technical Group
for Mary E. Peters, Director

APPROVAL OF
THE GILA RIVER INDIAN COMMUNITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the GILA RIVER INDIAN COMMUNITY and declare this agreement to be in proper form and within the powers and authority granted to the Community under the laws of the Community.

DATED this 31st day of August, 1998.



Attorney



GRANT WOODS
ATTORNEY GENERAL

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
1275 WEST WASHINGTON, PHOENIX 85007-2926

TRN Main: (602) 542-1680
Direct: (602) 542-8837
Fax: (602) 542-3646
MAIN PHONE : 542-5025
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR97-1235TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATE September 2, 1998.

GRANT WOODS
Attorney General



JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:et/14938

Enc.